REMARKS/ARGUMENTS

Claims 17-20 are pending in this application. Claims 1-16 and 21-28 have been previously canceled. Claims 29-50 had been previously withdrawn from further consideration as a result of the Examiner's earlier restriction requirement and are canceled herein in order to place the application in condition for allowance. Applicant retains the right to present claims 29-50 in a one or more future applications.

Reconsideration of this Application and entry of this Amendment after Final are respectfully requested. The proposed amendment places the claims in better form for appeal. Additionally, this amendment addresses items brought up by the examiner in the final office action. In view of the amendments and following remarks, favorable consideration and allowance of the application is respectfully requested.

35 U.S.C. §102 Rejections

Claims 17-20 have been rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,548,068 to Schlom et al. (hereinafter "Schlom"). Applicant respectfully traverses.

A claim is anticipated under 35 U.S.C. §102 only if each and every element as set forth in a claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131; *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d, 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987)). A claimed invention is anticipated only when it is "known to the art in the detail of the claim." *Karsten Manufacturing Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383 (Fed. Cir. 2001). In other words, not only must the limitations of the claim be shown in a single prior art reference, the limitations must be "arranged as in the claim." *Id.*

Schlom discloses recombinant viruses and host cells infected with the recombinant viruses wherein the host cell is injected with one or more recombinant viruses expressing at least a tumor associated antigen and an immunostimulatory molecule delivered to the cell in the recombinant virus. Schlom does not disclose a tumor cell composition consisting essentially of a tumor cell modified to express B7.2

and at least one additional immune modulator. The compositions disclosed by Schlom all require expression of an exogenous tumor associated antigen which has been introduced into the host cell in a recombinant vaccinia virus. The tumor associated antigen of Schlom is not an endogenous antigen, it is an exogenously introduced antigen. The instant claims use the phase "consisting essentially of" and therefore Schlom does not disclose the identical composition as the instant claims. The instantly claimed invention does not require an exogenously introduced tumor associated antigen in order to induce an immune response.

"A party asserting that a patent claim is anticipated under 35 USC 102 must demonstrate, among other things, 'identity of invention'" *Kalman v. Kimberly-Clark Corp.*, 713 F.2d 760, 771, 218 USPQ 781, 789 (Fed. Cir. 1983), *cert. denied*, 465 U.S. 1026 (1984), *overruled in part on another ground*, *SRI Int'l v. Matsushita Elec. Corp. of Am.* 775 F.2d 1107, 1125, 227 USPQ 577, 588-589 (Fed. Cir. 1985, (*en banc*). Schlom does not disclose the identical invention as the instantly claimed invention.

Furthermore, under the current statute, the test for anticipation is: "that which would literally infringe if later in time anticipates if earlier than the date of invention." *Lewmar Marine Inc. v. Barient Inc.*, 827 F.2d 744, 3 USPQ.2d 1766 (Fed. Cir. 1987). The instant claim would not be infringed by Schlom because Schlom requires an exogenously introduced tumor antigen, an element excluded by Applicant's use of the phrase "consisting essentially of."

Therefore, because Schlom does not disclose each and every element of the pending claims, the pending claims are novel over Schlom. Applicants respectfully request that the rejection of claims 17-20 under 35 USC §102(e) be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue and therefore Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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